IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MATTHEW S.,
Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY AND S.S.,
Appellees.

No. 2 CA-JV 2013-0142
Filed April 18, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Civ. App. P. 28(c); Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. J197752
The Honorable Richard E. Gordon, Judge

AFFIRMED

COUNSEL

Scott W. Schlievert, Tucson
Counsel for Appellant

Thomas C. Horne, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Arizona Department of Economic Security

Pima County Office of Children's Counsel
By Nicholas Knauer, Tucson
Counsel for Appellee S.S.

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Matthew S. appeals from the juvenile court's order terminating his parental rights to his daughter, S.S., born in September 2010, on time in care grounds pursuant to A.R.S. § 8-533(B)(8)(c).[1] On appeal, Matthew argues there was insufficient evidence to support termination. We affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005). In order to terminate Matthew's parental rights pursuant to § 8-533(B)(8)(c), the court had to find clear and convincing evidence that, despite the Department of Economic Security (ADES) having provided "appropriate reunification services," S.S. had been in an out-of-home placement for at least fifteen months, Matthew had failed to remedy the circumstance causing S.S. to be in such

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[1]The juvenile court also terminated the parental rights of S.S.'s mother, who is not a party to this appeal.

placement, and there was a "substantial likelihood" he would "not be capable of exercising proper and effective parental care and control in the near future." "On review . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Arizona Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 On appeal, we view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). In March 2011, Child Protective Services (CPS), a division of ADES, took custody of then six-month-old S.S.[2] following a report that Matthew had "wav[ed] a gun in the air" in the presence of S.S. and two other minors in the family home, and had shot six "rounds" at a neighbor's home.[3]

¶4 ADES filed a dependency petition citing as to Matthew the shooting incident, a history of domestic violence between the parents, Matthew's history of depression, and that he "abuses alcohol while taking morphine and oxycodone." Matthew entered a plea of no contest to the allegations in the first amended dependency petition and S.S. was adjudicated dependent as to him in June 2011. ADES offered Matthew various services, including anger management and substance abuse group sessions, individual therapy, parenting classes, a psychological evaluation, and drug testing.

¶5 Psychologist Lorraine Rasp Rollins diagnosed Matthew with, inter alia, depressive and anxiety disorders, substance and

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[2]S.S. was placed in the care of the maternal grandmother on March 28, 2011, where she resided until the severance hearing.

[3] Matthew was found guilty of three felony and two misdemeanors offenses related to the shooting incident, and in December 2012 he was sentenced to a 1.5-year prison term with an anticipated release date no later than May 2014.

alcohol abuse, partner relational problems with S.S.'s mother, who also had alcohol abuse problems, and neglect of child. Dr. Rollins reported that if Matthew "engages in substance abuse/dependence . . . and/or is with a partner who engages in substance abuse/dependence, or with whom he has a domestically violent or verbally abusive relationship he likely will pose significant risk for neglect or . . . abuse of a child in his care." Despite the parents' history of domestic violence and a December 2011 court order that "neither parent is to have any contact of any kind with each other," Matthew and the mother were married in March 2012.

¶6 At a September 2012 dependency review hearing, the juvenile court ordered the case plan changed to severance and adoption, and ADES filed a motion to terminate Matthew's parental rights to S.S. based on mental illness and chronic substance abuse, and court-ordered, out-of-home placement for fifteen months or longer. *See* A.R.S. § 8-533(B)(3), (B)(8)(c). Following an eight-day contested severance hearing that began in December 2012 and concluded in August 2013, the court terminated Matthew's parental rights to S.S. based on out-of-home placement for fifteen months or longer and found that termination was in S.S.'s best interests.

¶7 At the severance hearing, a CPS case worker testified that after having completed his initial therapy sessions, Matthew still had a "guarded prognosis" and needed "more services" before he could safely care for S.S. Dr. Daniel Overbeck, Matthew's individual therapist, concluded he might suffer from a neurological problem, and thus recommended he receive a neuropsychological evaluation. The test was not performed.[4] However, Dr. Overbeck testified that regardless of the presence of active neuropsychological factors, Matthew nonetheless would require "a couple of years" of

[4]Dr. Overbeck did not believe CPS's list of contract providers had "the particular focus" required to perform the neuropsychological evaluation, and apparently based on the estimated cost to proceed with a different provider, Matthew did not obtain the evaluation at his own expense.

weekly therapy before he would be ready to safely parent S.S. Dr. Overbeck also testified that Matthew might perceive "a pull of loyalties between what would be best for [S.S.] and what would be best for his wife," potentially placing S.S. in "a dangerous situation."

¶8 On appeal, Matthew does not dispute that S.S. was in an out-of-home placement for fifteen months or longer or that termination was in her best interests. Rather, he argues: (1) by failing to obtain a neuropsychological evaluation for him, ADES did not exercise diligent efforts to reunify the family; (2) "except for the passage of time and the [criminal] conviction," ADES failed to establish that Matthew was unable to remedy the circumstances that caused S.S. to be out of the family home; and, (3) pointing out that he was in substantial compliance with the case plan at all but one of the hearings, Matthew contends ADES failed to prove that he would be incapable of parenting S.S. in the near future.

¶9 In order to terminate parental rights on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a "diligent" effort to provide the family with appropriate reunification services. ADES fulfills this duty by providing a parent "with the time and opportunity to participate in programs designed to help [him] become an effective parent." *In re Maricopa Cnty. Juv. Action No. JS-501904,* 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide a parent with every conceivable service or to ensure that he participates in every service offered. *Id.*

¶10 We agree with ADES that Matthew's failure to object to the reasonable efforts findings during the dependency proceedings waived any argument that the services provided to him were inappropriate or inadequate. *See Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 19, 312 P.3d 861, 865 (App. 2013); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235 n.8, 256 P.3d 628, 632 n.8 (App. 2011). In a related argument, apparently raised for the first time in his written closing argument after the contested severance hearing had ended, Matthew asserted that ADES had failed to make diligent efforts to reunify the family. However, throughout the dependency, when things could have been done differently, Matthew did not object to the court's repeated findings that ADES

had made reasonable efforts to reunify the family by providing a variety of services, nor did he insist he was entitled to a neurological examination.

¶11 Waiver aside, for all of the reasons clearly set forth in the juvenile court's lengthy ruling terminating Matthew's parental rights, we conclude sufficient evidence supported its determination that termination was appropriate under § 8-533(B)(8)(c). We need not repeat the court's analysis in its entirety here. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Additionally, to the extent Matthew asks us to reweigh the evidence on appeal, we will not do so. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207 (resolution of "conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact").

¶12 The juvenile court's order terminating Matthew's parental rights to S.S. is affirmed.